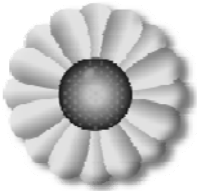


# KANSAS 2012



## COMPUTATION

Diane Jordan – Division of Workers Compensation

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### Introduction

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- ☐ Almost 18 months post “New Law”
  - ☐ May 15, 2001
  - ☐ Majority of settlements still “Old Law”
- ☐ New Law Book available soon
- ☐ Court Decisions effecting “New Law”
- ☐ Most computation changes straight forward
- ☐ Exception TPD for scheduled injuries

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### Covered Topics

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- ☐ New Caps
- ☐ Calculating Average Weekly Wage
- ☐ New Warning Notice
- ☐ Calculating TTD, TPD, & PPD
- ☐ Bilateral Injuries & Amputations
- ☐ Work Disability
- ☐ Death Benefits
- ☐ Online Calculator

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## Increased Benefit Caps

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- ☐ **Caps:**
  - ☐ Death benefit – \$300,000
    - ☐ Includes \$1,000 for appointment of conservator, if required
  - ☐ Permanent total – \$155,000
  - ☐ Permanent partial– \$130,000
  - ☐ Functional impairment – \$75,000
    - ☐ Applies even if TTD/TPD paid
- ☐ Historic Benefit Levels
  - ☐ <http://www.dol.ks.gov/WorkComp/current.aspx>

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## Computation Rules

5

- ☐ Date of Accident
- ☐ Weekly Maximum Rate
- ☐ Scheduled or Whole Body
- ☐ Situs of Disability

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## Old Law Gross Average Weekly Wage

6

- ☐ Full Time Employment
  - ☐ 40 hours unless industry standard is less than 40
- ☐ Calculating Overtime
  - ☐ Past 26 weeks if 26 weeks available
  - ☐ If less, average of weeks available

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### Old Law – Full time GAWW

7

HOURLY RATE X 8 X 5	\$10.00
	x <u>8</u>
	\$80.00
	x <u>5</u>
	\$400 STRAIGHT
TOTAL OVERTIME	\$1300.00
	<u>26</u>
	\$ 50.00
	+ 400.00
\$450 =GAWW	\$ 450.00

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### New Law

#### Calculation of Average Weekly Wage

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- ☐ **Wages** = Money + Additional Compensation
  - ☐ **Money**—Includes bonuses and gratuities
  - ☐ **Additional Compensation**
    - Board/lodging and employer-paid fringes only;
    - Include only if discontinued
- ☐ **Average Weekly Wage:**
  - ☐ Calculate using add and divide method
  - ☐ Use up to 26 weeks preceding injury, if worked

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### Temporary Total Disability

9

- ☐ Higher amount of .6667 of AWW or Max compensation rate for the Date of Accident
- ☐ No TTD for weeks during which employee receives unemployment benefits
- ☐ 7 day waiting period/21 day retroactive period

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## New Law Temporary Total Disability

10

- ☐ Opinion of authorized treating physician presumed determinative as to work status
- ☐ Employee entitled to TTD if employer cannot accommodate temporary restrictions of authorized treating physician
- ☐ No TTD if employee is terminated for cause or voluntarily resigns and employer could have accommodated temporary restrictions

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## Warning Notice to Employees

11

An insurer or self-insured employer shall provide the following notice to an insured worker on or with the first check for temporary disability benefits:

**Warning: Acceptance of employment with a different employer that requires the performance of activities you have stated you cannot perform because of the injury for which you are receiving temporary disability benefits could constitute fraud and could result in loss of future benefits and restitution of prior workers compensation awards and benefits paid.**

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## New Law - Scheduled Injuries

12

- ☐ Combine and rate multiple injuries in single extremity to highest scheduled member actually impaired
- ☐ Allow bilateral scheduled injuries in opposing extremities to be compensated as general bodily injuries – Reversed Casco Decision
- ☐ Loss of or loss of use of both eyes treated as general bodily injury
- ☐ May allow for payment of TPD

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## ? - New Law – Schedule Injuries & Temporary Partial Disability?

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- K.S.A. 2011 Supp 44-510d (a) Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i, and amendments thereto. *The injured employee may be entitled to payment of temporary total disability as defined in K.S.A. 44-510c, and amendments thereto, or temporary partial disability as defined in subsection (a)(1) of K.S.A. 44-510e, and amendments thereto, provided that the injured employee shall not be entitled to any other or further compensation for or during the first week following the injury unless such disability exists for three consecutive weeks, in which event compensation shall be paid for the first week. Thereafter compensation shall be paid for temporary total or temporary partial disability as provided in the following schedule, 66 2/3% of the average weekly wages to be computed as provided in K.S.A. 44-511, and amendments thereto, except that in no case shall the weekly compensation be more than the maximum as provided for in K.S.A. 44-510c, and amendments thereto.*

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## Temporary Partial Disability

14

- Diminishment of Wages
- Money not hours
- Scheduled Injuries
  - Prior to 5/15/2011 Not allowed
  - After 5/15/2011 May be Allowed
- Must be temporary
- Maximum applies

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## TPD Calculation - Claim 1

15

- Date of accident: 8/16/2011
- AWW: \$400.00
- Return to work earning: \$150.00
- Wage Loss:  $\$250 \times .6667 = \$166.68$  TPD

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## TPD Calculation - Claim 2

16

- ☐ Date of Accident: 8/22/2011
- ☐ AWW: \$1,200.00
- ☐ Return to work earning: \$300.00
- ☐ Wage loss: \$900.00 X .6667 = \$600.00
- ☐ TPD Rate: \$555.00 (Max for DoA)

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## TPD Conversion

17

- ☐ Amount of TPD divided by Weekly Comp Rate =  
number of weeks to be subtracted from weeks  
allowed for disability
- ☐ \$1,950.00 TPD / \$401.00 weekly rate  
= 4.86 weeks
- ☐ Richardson v. Wichita Arms Docket #176,396

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## Rules for Scheduled Injuries

18

- ☐ Injury to joint goes to next higher member
- ☐ AMA Guides 4<sup>th</sup> Edition
- ☐ Loss of use or loss of scheduled member
- ☐ Limited to:
  - ☐ Prior to 5/15/2011 - \$50,000
  - ☐ After 5/15/2011 - \$75,000

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## Functional Limit

19

- ☐ Old Law: Limit only applies if no TTD or TPD
  - ☐ Robert v. Midwest Mineral, Court of Appeals Docket #99909
- ☐ New Law: Limit applies whether or not TTD or TPD has been paid

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## PPD – Scheduled Member

20

- ☐ Date of Injury: 8/3/2011
- ☐ Injury: Ankle
- ☐ Schedule : 190 weeks for lower leg
- ☐ Average Weekly Wage: \$756.00
- ☐ Schedule : 190 weeks for lower leg
- ☐ Comp Rate:  $\$756.00 \times .6667 = \$504.03$
- ☐ TTD paid: 7 weeks
- ☐ Rating to lower leg: 14%

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## PPD – Scheduled Member Continued

21

**190 Weeks**  
**- 7 weeks TTD paid**  
**183 weeks remaining**  
**x14% impairment rating**  
**25.62 weeks owed**  
**x \$504.03 weekly rate**  
**\$12,913.25 Total amount PPD owed**

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## Amputation of Finger

22

- ☐ Thumb
  - ☐ 1<sup>st</sup> Bone = 1/2 schedule
  - ☐ 2<sup>nd</sup> Bone = whole schedule
- ☐ Fingers
  - ☐ 1<sup>st</sup> Bone = 1/2 schedule
  - ☐ 2<sup>nd</sup> Bone = 2/3 schedule
  - ☐ 3<sup>rd</sup> Bone = whole schedule
- ☐ Healing Period
  - ☐ 10% of Schedule up to 15 weeks

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## Rules for General Body Disability

23

- ☐ AMA Guides 4<sup>th</sup> Edition
- ☐ Functional or Work Disability
- ☐ First 15 weeks TTD are not subtracted
- ☐ Functional limit applies - \$75,000
- ☐ Limited to \$130,000 for Work Disability

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## PPD - General Body

24

- ☐ Date of accident: 8/19/2011
- ☐ General body injury: 415 weeks
- ☐ Average weekly wage: \$907.00
- ☐ Comp Rate:  $\$907.00 \times .6667 = \$604.70$
- ☐ Max Rate applies: \$555.00
- ☐ TTD paid: 38 weeks
- ☐ Rating to body as a whole: 15%

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## PPD - General Body Continued

25

**415**      **Weeks**  
 - **23**      **weeks (38-15)**  
**392**      **weeks remaining**  
**x 15** %   **impairment rating**  
**58.8**      **weeks owed**  
**x \$555.00**   **weekly rate**  
**\$32,634**      **Total amount PPD owed**

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## Body as a Whole Injuries

26

- ☐ Presumption is functional impairment
- ☐ Work disability available only if certain thresholds meet
  - ☐ Functional impairment > 7.5%
  - ☐ If preexisting impairment > or equal to 10%
  - ☐ Wage loss > 10%

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## Work Disability

27

$$\frac{A + B}{2}$$

**= Work Disability percentage**

**A = Work tasks performed in the last 5 years**

**B = Wage Loss**

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## New Law – Redefines Task Loss

28

- Task Loss- lost ability of claimant to perform work tasks performed in the last 5 years of employment
  - ▣ Reduced from 15 to 5 years
  - ▣ Based on Permanent restrictions issued by licensed physician
  - ▣ Does not include task lost due to preexisting restrictions

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## Old Law – Wage Loss

29

- Bergstrom v. Spears Mfg. Co. Supreme Court Docket # 99369
  - ▣ Eliminated interpretation of Good Faith Effort
  - ▣ K.S.A. 44-510e(a) – language does not require injured worker to make good faith effort

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## New Law - Redefines Wage Loss

30

- Wage loss – difference between AWW employee earned before injury and AWW employee capable of earning after injury
  - ▣ Capability based on all factors, ALJ imputes appropriate wage
  - ▣ Legal capacity to enter contract of employment required
  - ▣ Includes actual or projected weekly value of fringes
  - ▣ Refusal of accommodated work within restrictions and at comparable wage results in presumption of no wage loss

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## Death Benefits

31

- ☐ \$300,000 Maximum to spouse and/or dependent children
- ☐ \$40,000 Lump sum immediately
- ☐ Minimum benefit is 50% of the state's average weekly wage (effective July 1, 2012 - \$380)
- ☐ \$5,000 Burial allowance
- ☐ \$1,000 for cost of court-appointed conservator where necessary

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## Dependants

32

- ☐ Legal Surviving Spouse
- ☐ Children under 18
- ☐ Children 18 – 23 years old
- ☐ "Other children"

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## Apportionment

33

- ☐ 1/2 to Surviving Spouse
- ☐ 1/2 to Dependent Child/Children
- ☐ Maximum Exception
  - ☐ Minor Children under the age of 18
  - ☐ Board Decision - Mason v. James Mason Enterprises, Inc. Docket # 109,354

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## Conservatorship

34

- ☐ K.S.A. 44-513a
- ☐ K.S.A. 59-3050 THRU 59-3095
- ☐ Mandatory if benefits over \$10,000 TO minor dependent children
- ☐ \$1,000 allowed for cost of appointment of conservator

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## Online Calculator

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- ☐ Dates
  - ☐ <http://www.dol.ks.gov/WorkComp/date.aspx>
- ☐ Scheduled Injury
  - ☐ <http://www.dol.ks.gov/WorkComp/CalcSchedBody.aspx>
- ☐ Whole Body – New Law
  - ☐ [http://www.dol.ks.gov/WorkComp/CalcWholeBody\\_post20110515.aspx](http://www.dol.ks.gov/WorkComp/CalcWholeBody_post20110515.aspx)
- ☐ Examples
  - ☐ <http://www.dol.ks.gov/WorkComp/calc.aspx>

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## Helpful Web Sites

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- ☐ Kansas Department of Labor
  - ☐ [www.dol.ks.gov](http://www.dol.ks.gov)
- ☐ Kansas Insurance Department
  - ☐ [www.ksinsurance.org](http://www.ksinsurance.org)
- ☐ National Council on Compensation Insurance
  - ☐ [www.ncci.com](http://www.ncci.com)
- ☐ Kansas Legislature
  - ☐ [www.kslegislature.org](http://www.kslegislature.org)

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**<http://www.kscourts.org>**

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**Supreme Court:**  
 Good Faith Effort - Bergstrom v. Spears Mfg. Co. Docket # 99369

**Court of Appeals:**  
 Functional Limit - Robert v. Midwest Mineral Docket #99909

**Workers Compensation Appeals Board:**  
 TPD Conversion - Richardson v. Wichita Arms Docket #176,396

Death Benefit Maximum – Mason v. James Mason Enterprises, Inc. Docket # 109,354

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**Questions . . .**

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**Contact Information**

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